



JOHN G. POSA
GIFFORD, DRASS, GROH, SPRINKLE,
ANDERSON & CITKOWSKI, P.C.
280 N. OLD WOODWARD AVE., SUITE 400
BIRMINGHAM, MI 48009-5394

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OFFICE OF PETITIONS

In re Application of
Herrmann
Application No. 10/748,910
Filed: December 22, 2003
Attorney Docket No. BCR-10102/29
For: CUSHION GRIPS FOR SPRAY BOTTLE

: DECISION GRANTING
: PETITION
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This is a decision on the petition filed February 4, 2004 under 37 CFR 1.10(d), requesting that the above-identified application be accorded a filing date of December 22, 2003, rather than December 24, 2003.

Petitioner requests the earlier filing date on the basis that the application was deposited in United States Postal Service (USPS) Express Mail service on December 22, 2003, pursuant to the requirements of 37 CFR 1.10. The petition is accompanied by a copy of a USPS Pickup Service Statement showing Express Mail Label No. EV340745473US was picked up on December 22, 2003. The same Express Mail label number is found on the original application papers. In addition, petitioner has provided a letter from Charles Thomas, Jr. a USPS Customer Service Manager in Ann Arbor, MI that states the subject Express Mail package was picked up on December 22, 2003.

Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day." In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS."

The petition filed February 4, 2004 is accompanied by the corroborating evidence required by the rule. Accordingly, the petition is **GRANTED**. No petition fee has been or will be charged in connection with this matter.

The application is being returned to the Office of Initial Patent Examination for correction of the filing date to **December 22, 2003** and the mailing of a corrected filing receipt.

Thereafter, the application will be forwarded to Technology Center Art Unit 3676 for examination in due course.

Any inquiries related to this decision should be directed to the undersigned at (703) 308-6712.



E. Shirene Willis
Senior Petitions Attorney
Office of Petitions